

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:11CR197
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
DAVID VALADEZ-CHAVEZ,)	
)	
Defendant.)	

The Court has received the Revised/Modified Presentence Investigation Report ("PSR"), the Defendant's objections thereto (Filing No. 37), and the government's brief in response (Filing No. 38). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to ¶¶ 32-33, which state that the Defendant receives two additional criminal history points under U.S.S.G. § 4A1.1(d) because he committed the instant offense while on supervised release for another offense. The Defendant does not contest that the facts or the assessment of these criminal history points is incorrect. Rather, he argues that the sentencing guidelines are advisory and because he reentered the United States for family reasons during his period of supervised release the Court is not required to impose the criminal history points. The objection will be denied for the reasons stated in the Addendum to the PSR.

IT IS ORDERED:

1. The Defendant's objections to ¶¶ 32-33 of the PSR are denied;

2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final; and

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 29th day of December, 2011.

BY THE COURT:

s/ Laurie Smith Camp
Chief United States District Judge